STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JAMES EDDIE WILLIAMS,
Deceased.

JANICE PATTERSON,

Petitioner-Appellant,

v

UNICARE LIFE and THE BUDD COMPANY,

Respondents-Appellees.

UNPUBLISHED
November 21, 2000

No. 216933
Wayne Probate Court
LC No. 96-562546-SE

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Petitioner appeals as of right from the probate court's denial of her request to determine that she is an heir of James Eddie Williams for purposes of intestate succession. We affirm.

Petitioner was born while her mother, Barbara, was married to James Isaacs Patterson. Subsequently, they divorced and a default divorce judgment granted Barbara custody of the children of their marriage, including petitioner. James Patterson has since died.

On May 19, 1996, James Eddie Williams died intestate. Petitioner was listed as Williams' daughter on the petition to commence proceedings. Petitioner also filed a claim for insurance survivorship benefits through the insurance that Williams obtained from his employer and its insurance carrier, who are the instant respondents. Respondents denied that claim because petitioner could not prove Williams was her father. Petitioner then filed a petition to determine heirs on the basis of her interests in the survivor benefits and real property owned by Williams.

I

Petitioner argues that the trial court erred in ruling that the doctrine of res judicata operates to bar her from proving that Williams was petitioner's father. We disagree.

Res judicata is a question of law that this Court reviews de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). "Res judicata bars a litigant from relitigating a claim when the former action was decided on the merits or the matter could have been decided in the first action and where the two actions are between the same parties or those in privity with the parties." *In re Quintero Estate*, 224 Mich App 682, 689; 569 NW2d 889 (1997). This Court has previously observed that Michigan's broad application of res judicata will preclude parties from raising the issue of paternity if it has already been conclusively determined. *Id.* at 690. Further, judgments of divorce are final judgments and are given preclusive effect under the doctrine of res judicata. *Id.* at 690-691.

Even though petitioner is not barred by res judicata because she was not in privity with her mother to the previous action, petitioner lacks standing to rebut the statutory presumption of paternity. *Id.* at 689, 691. "[T]he determination of heirs is to be governed by statutes in effect at the time of death." *In re Jones Estate*, 207 Mich App 544, 553; 525 NW2d 493 (1994), citing *In re Adolphson Estate*, 403 Mich 590, 593; 271 NW2d 511 (1978). Therefore, review of this case requires analysis of the Revised Probate Code (RPC) § 111. MCL 700.111; MSA 27.5111. The pertinent provisions of the RPC include:

> (1) For all purposes of intestate succession, a child is the heir of each of his or her natural parents notwithstanding the relationship between the parents except as otherwise provided by section 110.
>
> (2) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for all purposes of intestate succession. …
>
> (3) Only the person presumed to be the natural parent of a child under subsection (2) may disprove any presumption that may be relevant to the relationship, and this exclusive right to do so terminates upon the death of the presumed parent.
>
> (4) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs: …

In *Quintero, supra*, which involved facts similar to those in the present case, this Court concluded that:

> once the presumption of § 111(2) attaches, only the presumed parents can challenge the parentage of children born during a marriage under § 111(3). Thus, § 111(4) applies only to children born to a single, unwed mother or unprotected children, i.e., children whose presumed parent has disproved the presumption of parentage. [*Quintero, supra* at 700; citation omitted.]

In this case, petitioner falls squarely within subsection 2. She was born during a marriage and has presumed parents. Thus, under subsection 3, only her presumed parents can rebut that presumption, and she lacks standing to do so. Therefore, although petitioner herself is not barred

by the doctrine of res judicata from rebutting the presumption that Barbara and James Patterson are her parents because she is not in privity with her mother as regards the divorce judgment, petitioner lacks standing to challenge the presumption. Because of the divorce judgment, Barbara is precluded by res judicata from rebutting the presumption. Further, because § 111(3) provides that only the presumed parent can rebut the presumption, the only person who has standing to challenge the presumption is precluded by the doctrine of res judicata from doing so. Therefore, petitioner's lack of standing and the doctrine of res judicata, as applied through petitioner's mother, operate to prevent petitioner from rebutting the presumption. The trial court was correct.

II

Petitioner also argues that she should be allowed to use methods beyond those allowed by statute to establish paternity. We disagree.

Statutory construction is a question of law that this Court reviews de novo. *Haworth, Inc v Wickes Mfg Co,* 210 Mich App 222, 227; 532 NW2d 903 (1995). The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Id.*

According to § 111(3) of the RPC, only Barbara or James Patterson could disprove the presumption of presumed parentage. As noted previously, Barbara is precluded from rebutting that presumption and James Patterson is apparently deceased. James' right to rebut the presumption, which is exclusive to the presumed parents, is now terminated because of his death. MCL 700.111(3); MSA 27.5111(3).

There is no merit to petitioner's assertion that only the exclusivity of her presumed father's right, and not the right itself, is terminated. Courts will not read something into a statute that is not within the manifest intent of the Legislature according to the act itself. *McJunkin v Cellasto Plastic Corp,* 461 Mich 590, 598; 608 NW2d 57 (2000). Section 111(3) never mentions the possibility of any other person being able to disprove the presumption of parentage. Further, in *Quintero,* this Court was unable to find any authority "supporting the proposition that persons other than the presumed father may challenge the legitimacy or parentage of children born during a marriage …." *Quintero, supra* at 695.

The subsections of § 111 were arranged in a logical, methodical sequence and are based on the traditional preference for protecting the presumed legitimacy of children born during a marriage. *Id.* at 694. Accordingly, petitioner cannot be subject to § 111(4) nor go beyond that section, when an earlier section, namely § 111(2), applies to her. Section 111(4) does not apply to children born into a marriage unless the presumed father has overcome the presumption of paternity. *Id.* Accordingly, petitioner lacks standing to challenge the presumption of paternity, her mother is precluded from challenging that presumption, and her presumed father's right has terminated with his death.

III

The parties also raise issues concerning whether the Employee Retirement Income Security Act (ERISA) governs the insurance contract for survivorship benefits. We decline to review this issue because its resolution is unnecessary to the disposition of this case.

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin